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11 and Euberah Jewelry, Co.

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 UNICOLORS, INC., a California
17 corporation,

18 Plaintiff,

19 v.

20 ANN'S TRADING CO., INC., a California
21 Corporation, individually and d/b/a "E &
22 K"; EUBERAH JEWELRY CO., an
23 Illinois Corporation; L'PATRICIA S.M.,
24 LLC, a Texas Limited Liability Company;
25 and DOES 1 through 10,

26 Defendants.
27
28

Case No. 2:15-cv-04275-GW (AJWx)

**ORDER TO STIPULATED
PROTECTIVE ORDER**

1 **PURPOSES AND LIMITATIONS**

2 **1.1 Stipulation and Acknowledgments**

3 Discovery in this Action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be
6 warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter
7 the following Stipulated Protective Order. The Parties acknowledge that this Order
8 does not confer blanket protections on all disclosures or responses to discovery and
9 that the protection it affords from public disclosure and use extends only to the
10 limited information or items that are entitled to confidential treatment under the
11 applicable legal principles. The Parties further acknowledge, as set forth in Section
12 12.3 below, that this Stipulated Protective Order does not entitle them to file
13 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
14 that must be followed and the standards that will be applied when a Party seeks
15 permission from the court to file material under seal.

16 **1.2 Good Cause Statement**

17 This Action is likely to involve trade secrets, customer and pricing lists and
18 other valuable research, development, commercial, financial, technical and/or
19 proprietary information for which special protection from public disclosure and from
20 use for any purpose other than prosecution of this Action is warranted. Such
21 confidential and proprietary materials and information consist of, among other
22 things, confidential business or financial information, information regarding
23 confidential business practices, or other confidential research, development, or
24 commercial information (including information implicating privacy rights of third
25 parties), information otherwise generally unavailable to the public, or which may be
26 privileged or otherwise protected from disclosure under state or federal statutes,
27 court rules, case decisions, or common law. Accordingly, to expedite the flow of

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1 information, to facilitate the prompt resolution of disputes over confidentiality of
 2 discovery materials, to adequately protect information the parties are entitled to keep
 3 confidential, to ensure that the parties are permitted reasonable necessary uses of
 4 such material in preparation for and in the conduct of trial, to address their handling
 5 at the end of the litigation, and serve the ends of justice, a protective order for such
 6 information is justified in this matter. It is the intent of the parties that information
 7 will not be designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
 8 ATTORNEYS’ EYES ONLY” for tactical reasons and that nothing be so designated
 9 without a good faith belief that it has been maintained in a confidential, non-public
 10 manner, and there is good cause why it should not be part of the public record of this
 11 case.

12 2. DEFINITIONS

13 2.1 **Action:** *Unicolors, Inc. v. Ann’s Trading Co., Inc., et al*, Case No. 15-
 14 cv-04275-GW-AJW United States District Court for the Central District of
 15 California.

16 2.2 **Challenging Party:** a Party or Non-Party that challenges the
 17 designation of information or items under this Order.

18 2.3 **“CONFIDENTIAL” Information or Items:** information (regardless
 19 of how it is generated, stored or maintained) or tangible things that qualify for
 20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
 21 Good Cause Statement.

22 2.4 **Counsel:** Outside Counsel of Record (as well as their support staff) and
 23 House Counsel (as well as their support staff).

24 2.5 **Designating Party:** a Party or Non-Party that designates information or
 25 items that it produces in disclosures or in responses to discovery as
 26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
 27 ONLY.”

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1 **2.6 Disclosure or Discovery Material:** all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 **2.7 Expert:** a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
7 an expert witness or as a consultant in this Action.

8 **2.8 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”**
9 **Information or Items:** information (regardless of how it is generated, stored or
10 maintained) or tangible things which are “CONFIDENTIAL” within the meaning of
11 the definition of Section 2.3 above which are extremely sensitive such that the
12 disclosure of which to another Party or Non-Party would create a substantial risk of
13 serious harm that could not be avoided by less restrictive means, including but not
14 limited to information the disclosures of which the Producing Party believes in good
15 faith will cause harm to its business position. Disclosure of “HIGHLY
16 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Information or Items is limited to
17 that as set forth in Section 7.3 below.

18 **2.9 House Counsel:** attorneys who are employees of a Party to this Action.
19 House Counsel does not include Outside Counsel of Record or any other outside
20 counsel.

21 **2.10 Non-Party:** any natural person, partnership, corporation, association, or
22 other legal entity not named as a Party to this Action.

23 **2.11 Outside Counsel of Record:** attorneys who are not employees of a
24 Party to this Action but are retained to represent or advise a Party to this Action and
25 have appeared in this Action on behalf of that Party or are affiliated with a law firm
26 which has appeared on behalf of that Party, and includes support staff.

1 2.12 **Party:** any Party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staff).

4 2.13 **Producing Party:** a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.14 **Professional Vendors:** persons or entities that provide litigation
7 support services (e.g., photocopying, court reporter, transcription, videotaping,
8 translating, preparing exhibits or demonstrations, and organizing, storing, or
9 retrieving data in any form or medium) and their employees and subcontractors.

10 2.15 **Protected Material:** any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’
12 EYES ONLY.”

13 2.16 **Receiving Party:** a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 **3. SCOPE**

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the
22 trial judge. This Order does not govern the use of Protected Material at trial.

23 **4. DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees
26 otherwise in writing or a court order otherwise directs. Final disposition shall be
27 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
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1 or without prejudice; and (2) final judgment herein after the completion and
 2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 3 including the time limits for filing any motions or applications for extension of time
 4 pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

7 Each Party or Non-Party that designates information or items for protection under
 8 this Order must take care to limit any such designation to specific material that
 9 qualifies under the appropriate standards. The Designating Party must designate for
 10 protection only those parts of material, documents, items, or oral or written
 11 communications that qualify so that other portions of the material, documents, items,
 12 or communications for which protection is not warranted are not swept unjustifiably
 13 within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
 15 that are shown to be clearly unjustified or that have been made for an improper
 16 purpose (e.g., to unnecessarily encumber the case development process or to impose
 17 unnecessary expenses and burdens on other parties) may expose the Designating
 18 Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
 20 designated for protection do not qualify for protection, that Designating Party must
 21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 23 this Order (see, e.g., second section of Paragraph 5.2(a) below), or as otherwise
 24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 25 under this Order must be clearly so designated before the material is disclosed or
 26 produced.

27 Designation in conformity with this Order requires:

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1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
5 ONLY” (hereinafter “CONFIDENTIALITY legend”), to each page that contains
6 protected material. If only a portion or portions of the material on a page qualifies for
7 protection, the Producing Party also must clearly identify the protected portion(s)
8 (e.g., by making appropriate markings in the margins).

9 A Party or Non-Party that makes original documents available for inspection
10 need not designate them for protection until after the inspecting Party has indicated
11 which documents it would like copied and produced. During the inspection and
12 before the designation, all of the material made available for inspection shall be
13 deemed “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” After the
14 inspecting Party has identified the documents it wants copied and produced, the
15 Producing Party must determine which documents, or portions thereof, qualify for
16 protection under this Order. Then, before producing the specified documents, the
17 Producing Party must affix the “CONFIDENTIALITY legend” to each page that
18 contains Protected Material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in depositions that the Designating Party
22 identify the Disclosure or Discovery Material on the record, before the close of the
23 deposition all protected testimony.

24 (c) for information produced in some form other than documentary
25 and for any other tangible items, that the Producing Party affix in a prominent place
26 on the exterior of the container or containers in which the information is stored the
27 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
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1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 et seq.

15 6.3 Burden of Persuasion. The burden of persuasion in any such challenge
16 proceeding shall be on the Designating Party. Frivolous challenges, and those made
17 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
18 on other parties) may expose the Challenging Party to sanctions. Unless the
19 Designating Party has waived or withdrawn the confidentiality designation, all
20 parties shall continue to afford the material in question the level of protection to
21 which it is entitled under the Producing Party's designation until the Court rules on
22 the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 Action only for prosecuting, defending, or attempting to settle this Action. Such
27 Protected Material may be disclosed only to the categories of persons and under the

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1 conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of Paragraph 13 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 "CONFIDENTIAL" only to:

11 (a) the Receiving Party's Outside Counsel of Record in this Action,
12 as well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this Action;

14 (b) the officers, directors, and employees (including House Counsel)
15 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the
18 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and
22 Professional Vendors to whom disclosure is reasonably necessary for this Action and
23 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (g) the author or recipient of a document containing the information
25 or a custodian or other person who otherwise possessed or knew the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in
27 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
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1 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
2 they will not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may be
6 separately bound by the court reporter and may not be disclosed to anyone except as
7 permitted under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting
9 personnel, mutually agreed upon by any of the parties engaged in settlement
10 discussions.

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
12 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
13 writing by the Designating Party, a Receiving Party may disclose any information or
14 item designated “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” only
15 to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action,
17 as well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) Experts (as defined in Paragraph 2.7) to whom disclosure is
20 reasonably necessary for this Action and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

22 (c) the Court and its personnel;

23 (d) court reporters and their staff;

24 (e) professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action and
26 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
27

1 (f) the author or recipient of a document containing the information
2 or a custodian or the original source of the information;

3 (g) during their depositions, witnesses in the Action (and their
4 attorneys) who are current employees or former employees who originated, authored
5 or received a copy of the “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
6 ONLY” information of the Designating Party who have signed the
7 “Acknowledgment and Agreement to Be Bound” in Exhibit A to this Protective
8 Order, unless otherwise agreed by the Designating Party or ordered by the Court.
9 Pages of transcribed deposition testimony or exhibits to depositions that reveal
10 Protected Material must be separately bound by the court reporter and may not be
11 disclosed to anyone except as permitted under this Protective Order; and

12 (h) any mediator or settlement officer, and their supporting
13 personnel, mutually agreed upon by any of the parties engaged in settlement
14 discussions, who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A).

16 (i) Any active sitting judge of the United States District Court and
17 their supporting personnel are specifically exempt from the requirement to sign the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such
25 notification shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material covered by the

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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as "CONFIDENTIAL" before a determination by the court from which the
8 subpoena or order issued, unless the Party has obtained the Designating Party's
9 permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material and nothing in these provisions
11 should be construed as authorizing or encouraging a Receiving Party in this Action
12 to disobey a lawful directive from another court.

13 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
14 **PRODUCED IN THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by
16 a Non-Party in this Action and designated as "CONFIDENTIAL." Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request,
21 to produce a Non-Party's confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party's
23 confidential information, then the Party shall:

24 (i) promptly notify in writing the Requesting Party and the
25 Non-Party that some or all of the information requested is subject to a confidentiality
26 agreement with a Non-Party;
27

(ii) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(iii) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

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1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
4 parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted
7 to the court.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 **13. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected

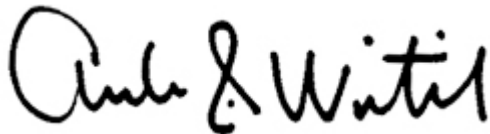
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1 Material. Whether the Protected Material is returned or destroyed, the Receiving
2 Party must submit a written certification to the Producing Party (and, if not the same
3 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
4 (by category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any
7 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
10 reports, attorney work product, and consultant and expert work product, even if such
11 materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Paragraph 4 (DURATION).

14 14. **VIOLATION**. Any violation of this Order may be punished by any and all
15 appropriate measures including, without limitation, contempt proceedings and/or
16 monetary sanctions.

17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19 DATED: _____10/15/2015_____

20
21 
22

23 Honorable Andrew J. Wistrich
24 United States Magistrate Judge
25
26
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full
 address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States
 District Court for the Central District of California on _____[date] in
 the case of *Unicolors, Inc. v. Ann's Trading Co., Inc., et al*, Case No. 15-cv-04275-
 GW-AJW, U.S. District Court Central District of California. I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order
 to any person or entity except in strict compliance with the provisions of this Order. I
 further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of
 this action. I hereby appoint _____ [print or type full
 name] of _____ [print or type full address
 and telephone number] as my California agent for service of process in connection
 with this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____